

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.)	
)	
Plaintiffs)	
)	
v.)	Case No. 4:05-cv-00329-GKF-SAJ
)	
TYSON FOODS, INC., et al)	
)	
Defendants)	

**SIMMONS FOODS, INC.’S REPLY IN FURTHER SUPPORT
OF ITS MOTION FOR PROTECTIVE ORDER**

For its Reply in Further Support of its Motion for Protective Order Simmons Foods, Inc. (“Simmons”) adopts and incorporates the arguments and authorities submitted by Peterson Farms, Inc. in its reply brief (Docket. 1803) and in addition submits the following:

1. Plaintiff’s reply brief demonstrates the over-breadth of its discovery requests.

On the first page of its response brief, Plaintiff states that the discovery it submitted to Simmons was “to determine how this transaction [Simmons’ purchase of certain assets from Peterson¹] impacted Simmons’ and Peterson’s liabilities in this case.” (State of Oklahoma’s Opposition to Simmons Foods, Inc.’s Motion for Protective Order, p.1, ¶ 2 (Docket 1793) (“Plaintiff’s Opposition.”)). If, in fact, the discovery submitted to Simmons and Peterson had been narrowly tailored to request only documents that concerned whether and how the business transaction impacted Simmons and Peterson’s potential liabilities in this case, there would be no need for a protective order. In the meet

¹ Plaintiff erroneously states that Peterson Farms, Inc. purchased Simmons Foods, Inc.’s poultry operations. State of Oklahoma’s Opposition to Simmons Foods, Inc.’s Motion for Protective Order, p.1, ¶ 2 (Docket 1793).

and confer with Plaintiff, Simmons and Peterson offered to provide the documents that would answer that question. However, Plaintiff refused to accept those documents as a complete response to its discovery requests. If Plaintiff had agreed to narrow its document requests to address the specific issue it now claims it intended, those documents would have been provided and the Court would not be involved in this dispute.

Plaintiff's document requests clearly seek documents that relate to much broader issues than how the transaction between Simmons and Peterson impacted their respective liability, if any, in this case. For instance, Plaintiff's Request No. 1 seeks ALL transaction documents and is not limited to those documents relevant to the impact, if any, on Simmons and Peterson's potential liability in this case.

Request No. 2 seeks "any and all environmental due diligence activities, reports, disclosures, or investigations pertaining to [Simmons] acquisition of Peterson Farms, Inc.'s poultry operations." As stated in Simmons' Motion for Protective Order, none of the assets Simmons purchased are located in the Illinois River Watershed, except for the birds located on independent grower farms. In addition, none of the assets purchased by Simmons involve the land application of poultry litter, which is the subject of this lawsuit. Plaintiff's Opposition states that birds "produce waste." Arguably, if Simmons conducted due diligence activities, or obtained reports, disclosures or investigations concerning any "waste" allegedly produced by the birds purchased from Peterson, if any, those documents could be relevant to this case. However, Plaintiff's request as drafted is not limited to birds or poultry litter.

Request No. 3 is likewise overly broad. It seeks “any documents referring to or relating to reason(s) why Peterson Farms, Inc. decided to transfer its poultry operations to [Simmons.]” In its Opposition brief, Plaintiff states that there could be some document demonstrating that Peterson’s decision to sell certain assets had to do with alleged environmental liabilities. However, once again, Plaintiff’s request is not narrowly tailored to seek only those documents that would reflect that alleged environmental liabilities were a motivation for selling certain assets. The fact that Plaintiff can now in its Opposition brief narrow the scope of documents that might be relevant does not cure the over-breadth of its requests.

2. Plaintiff cites no authority for its position.

Plaintiff’s Opposition brief fails to cite any authority for its position. Plaintiff states that it is entitled to “documentation reflecting the nature of the assets transferred, the manner of the transfer, whether fair market value has been given for the assets transferred, whether there are any agreements regarding liability or indemnification, and the like.” (Plaintiff’s Opposition, p. 2). In addition to the fact that this list is much broader and more encompassing than what Plaintiff says it is seeking in the opening paragraph of its brief, Plaintiff cites no authority for its argument that it is entitled to this information. The cases cited by Plaintiff in its brief are not applicable to the facts of this case because those cases all deal with issues of successor liability. Successor liability is not an issue in this case.

Moreover, prior to filing their respective motions for protective order, Simmons and Peterson offered to provide Plaintiff with documents specific to these issues (with the exception of the price paid for the assets) and Plaintiff refused to accept that offer.

3. Plaintiff's reliance on the confidentiality order is misplaced.

Plaintiff raises the existence of the confidentiality order as a justification for its overly broad discovery requests. However, the existence of a confidentiality order does not give the parties carte blanche to seek whatever documents they desire. Instead, the document requests must *first* meet the requirements of the Rules of Civil Procedure, including the rules governing relevancy and burden and prejudice to the producing party.

4. Simmons and Peterson have not waived the protections of the joint defense doctrine.

Plaintiff's Request for Production No. 4 specifically seeks documents exchanged between Simmons and Peterson that relate to this lawsuit. Communications and documents between Simmons and Peterson concerning this lawsuit are clearly protected by the joint defense doctrine. This Court has already ruled that the joint defense doctrine is alive and well and applicable in this case. The fact that a co-defendant purchased certain assets from another co-defendant does not waive or negate the protections of the joint defense doctrine.

CONCLUSION

Plaintiff's document requests are overly broad in that they seek information that is not relevant to any issues in the case. Furthermore, they seek information that is highly confidential and the disclosure of which could be highly prejudicial to Simmons in the competitive market. For these reasons, Simmons prays that this Court enter its order relieving Simmons from any obligation to respond to Plaintiff's document requests and for such other and further relief this Court deems just and proper.

SIMMONS FOODS, INC.,

By: /s/ Vicki Bronson

John R. Elrod
Vicki Bronson, OK Bar Number 20574
CONNER & WINTERS, LLP
211 East Dickson Street
Fayetteville, AR 72701
(479) 582-5711
(479) 587-1426 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on 21st day of November, 2008, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Melvin David Riggs
Richard T. Garren
Sharon K. Weaver
David P. Page
Riggs Abney Neal Turpen Orbison
& Lewis
502 W. 6th St.
Tulsa, OK 74119-1010
Counsel for Plaintiffs

Robert Allen Nance
Dorothy Sharon Gentry
Riggs Abney
5801 N. Broadway
Suite 101
Oklahoma City, OK 73118
Counsel for Plaintiffs

William H. Narwold
Ingrd L. Moll
Motley Rice LLC
20 Church St., 17th Floor
Hartford, CT 06103
Counsel for Plaintiffs

Fidelma L. Fitzpatrick
Jonathan D. Orent

Robert M. Blakemore
Louis W. Bullock
Bullock Bullock & Blakemore
110 West 7th Street, Suite 707
Tulsa, OK 74119-1031
Counsel for Plaintiffs

W.A. Drew Edmondson
Attorney General
Kelly Hunter Burch
J. Trevor Hammons
Daniel P. Lennington
Assistant Attorneys General
State of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105
Counsel for Plaintiffs

Elizabeth C. Ward
Frederick C. Baker
Lee M. Heath
Elizabeth Claire Xidis
Motley Rice LLC
28 Bridgeside Blvd.
P.O. Box 1792
Mount Pleasant, SC 29465
Counsel for Plaintiffs

Michael L. Rousseau
Motley Rice LLC
321 S. Main St.
P.O. Box 6067
Providence, RI 02940
Counsel for Plaintiffs

Michael R. Bond
Erin W. Thompson
Kutak Rock, LLP
The Three Sisters Building
214 West Dickson
Fayetteville, AR 72701

Robert W. George
L. Bryan Burns
Tyson Foods, Inc.
2210 West Oaklawn Dr.
Springdale, AR 72764
Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc.

Mark D. Hopson
Timothy K. Webster
Jay T. Jorgensen
Sidley, Austin Brown & Wood, LLP
1501 K. Street, N.W.
Washington, D.C. 20005-1401
Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc.

Woody Bassett
Gary Weeks
James W. Graves
Paul E. Thompson, Jr.
K.C. Tucker
Bassett Law Firm
P.O. Box 3618
Fayetteville, AR 72702-3618
Counsel for George's, Inc. and George's Farms, Inc.

Randall Eugene Rose
George W. Owens

Patrick M. Ryan
Stephen L. Jantzen
Paula M. Buchwald
Ryan, Whaley & Coldiron
900 Robinson Renaissance
119 North Robinson, Suite 900
Oklahoma City, OK 73102
Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc.

John H. Tucker
Colin H. Tucker
Theresa Noble Hill
Leslie J. Southerland
Rhodes, Hieronymus, Jones, Tucker & Gable, P.L.L.C.
100 West Fifth St., Suite 400
Tulsa, OK 74121-1100
Counsel for Cargill, Inc. and Cargill Turkey Production, LLC.

Terry West, Esquire
The West Law Firm
124 W. Highland St.
Shawnee, OK 74801
Counsel for Cargill, Inc. and Cargill Turkey Production, LLC

Todd P. Walker
Faegre & Benson LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, CO 80203
303-607-3500
303-607-3600
Counsel for Cargill, Inc. and Cargill Turkey Production LLC

A. Scott McDaniel
Phillip D. Hixon
Nicole M. Longwell
Craig A. Mirkes
McDaniel, Hixon, Longwell
& Acord, PLLC

Owens Law Firm PC
234 W. 13th St.
Tulsa, OK 74119-5038
**Counsel for George's, Inc. and George's
Farms, Inc.**

Delmar R. Ehrich
Bruce Jones
Krisann Kleibacker Lee
Christopher H. Dolan
Faegre & Benson
90 S. 7th St., Suite 2200
Minneapolis, MN 55402-3901
**Counsel for Cargill, Inc. and Cargill
Turkey Production, LLC**

Robert P. Redeman
Lawrence W. Zeringue
David C. Senger
Perrine, McGivern, Redemann, Reid, Berry
& Taylor, PLLC
P.O. Box 1710
Tulsa, OK 74101
**Counsel for Cal-Maine Foods, Inc. and
Cal-Maine Farms, Inc.**

Robert E. Sanders
Stephen Williams
Young, Williams, Henderson & Fusilier
P.O. Box 23059
Jackson, MS 39225-3059
**Counsel for Cal-Maine Foods, Inc. and
Cal-Maine Farms, Inc.**

320 South Boston Ave., Suite 700
Tulsa, OK 74103
Counsel for Peterson Farms, Inc.

Sherry P. Bartley
Mitchell Williams Selig Gates &
Woodyard PLLC
425 W. Capitol Ave., Suite 1800
Little Rock, AR 72201-3525
Counsel for Peterson Farms, Inc.

Jennifer Stockton Griffin
David G. Brown
Lathrop & Gage LC
314 E. High St.
Jefferson City, MO 65101
Counsel for Willow Brook Foods, Inc.

Raymond Thomas Lay
Kerr Irvine Rhodes & Ables
201 Robert S. Kerr Ave.
Suite 600
Oklahoma City, OK 73102
Counsel for Willow Brook Farms, Inc.

/s/ Vicki Bronson

Vicki Bronson